

Mr. Chairman and members of the Committee, I am Eileen Harrington, Associate Director for Marketing Practices in Federal Trade Commission's Bureau of Consumer Protection. On behalf of the Commission, I appreciate this opportunity to provide information to the Committee on the Commission's law enforcement activities regarding the funeral industry.⁽¹⁾

Congress has charged the Federal Trade Commission with protecting American consumers -- including consumers who find themselves in need of funeral goods or services -- from "unfair methods of competition" and "unfair or deceptive acts or practices" in the marketplace. The cornerstone of the Commission's statutory authority in fulfilling this mandate is the Federal Trade Commission Act.⁽²⁾

In enforcing the FTC Act, the agency's mission is to ensure that consumers benefit from a vigorously competitive marketplace. The Commission does not seek to supplant competition with regulation. The Commission is, first and foremost, a law enforcement agency. The Commission's work is rooted in a belief that free markets work -- that competition among producers and truthful information in the hands of consumers brings the best products at the lowest prices for consumers, spurs efficiency and innovation, and strengthens the economy.

The Commission promotes healthy competition in the marketplace through both its competition and consumer protection missions. First, for consumers to have a choice of products and services at competitive prices and quality, the marketplace must be free from anticompetitive business practices. Thus, the Commission's antitrust mission seeks to prohibit anticompetitive mergers or other anticompetitive business practices without interfering with the legitimate activities of businesses.

Second, for competition to thrive, curbing deception and fraud is critical. Through its consumer protection activities, the Commission seeks to ensure that the information companies provide to consumers is accurate, not false or misleading. The Commission's primary activity in pursuing its consumer protection mission as to the funeral industry is the enforcement of the Funeral Industry Practices Trade Regulation Rule, 16 C.F.R. Part 453, ("Funeral Rule").

Antitrust Enforcement in the Funeral Industry

The Commission is concerned about activities in the funeral industry that may lessen competition and result in noncompetitive prices or lower quality of services for consumers. Conduct or transactions that raise antitrust concerns are anticompetitive agreements among competitors, attempts to monopolize a market, and mergers and acquisitions that threaten a substantial lessening of competition. The Commission's staff is constantly on the look-out for such activities, and they work closely with state attorneys general in their monitoring and enforcement efforts.

In recent years, the principal antitrust enforcement efforts in the funeral industry have involved potentially anticompetitive mergers and acquisitions. These cases generally are resolved through consent orders that require the acquiring firm to divest one or more acquired properties in order to prevent a lessening of competition. In 1999, for example, the FTC secured a consent decree with Service Corporation International (SCI), the largest owner of funeral homes and cemeteries in the world, to divest funeral service and cemetery properties in 14 local geographic markets in connection with its acquisition of Equity Corporation International, the fourth largest funeral home and cemetery company in the United States.⁽³⁾ The complaint alleged that the acquisition would raise significant competitive concerns in six local markets for funeral services, with total annual sales of approximately \$36.6 million for funeral services, and in eight local markets for cemetery services, with total annual sales of approximately \$47.3 million.

An important aspect of the antitrust analysis of mergers in this industry is that the markets for funeral and cemetery services are very localized. This means that, from an antitrust perspective, a merger or acquisition raises antitrust concerns only to the extent that the transaction will reduce the number of firms in a particular geographic area to such a level that the remaining firm or firms could raise prices or otherwise adversely affect consumers. An acquisition that involves funeral homes or cemeteries in many cities may raise antitrust concerns in only a few, or in none. Even when relatively few firms remain, competition will not necessarily be lessened, because other factors, such as the potential for new firms to enter the market, may keep the market competitive. The Commission remains vigilant for the relatively few transactions that raise serious concerns.

Consumer Protection Enforcement in the Funeral Industry

The Funeral Rule

The Funeral Rule was adopted by the Commission in 1982 and became fully effective in 1984. It has the force and effect of law, and it may be enforced through civil penalty actions in the federal courts. The FTC Act authorizes courts to impose civil penalties of not more than \$11,000 per violation for failure to comply. The Rule covers funeral providers -- that is, industry members that sell both funeral goods and funeral services to the public.⁽⁴⁾ Although most funeral providers are funeral homes, other businesses, such as cemeteries and crematories, can also be "funeral providers" within the coverage of the Rule if they market both funeral goods and services. Furthermore, the Rule's requirements apply to both pre-need and at-need funeral arrangements; in pre-need situations, funeral providers must comply with all Rule requirements at the time funeral arrangements are pre-planned.⁽⁵⁾

The Rule requires funeral providers to furnish consumers with three basic types of information, which, taken together, enable consumers to select the goods and services they want and to comparison shop for them. First, the Rule ensures that consumers receive itemized price information for the various goods and services that make up a funeral. If a consumer inquires about price over the telephone, funeral providers must give accurate price and other reasonable information about the goods and services they offer. If a consumer visits a funeral home in person, the Rule requires that the funeral director provide the consumer with a general price list that itemizes prices of each of the funeral goods and services offered by the funeral home. The Rule also requires funeral providers to show consumers a casket price list and an outer burial container price list, if the home's offerings of those items are not itemized on the general price list. At the beginning of any discussion of funeral arrangements, funeral directors must provide a copy of the general price list for the consumer to keep, and must show the casket price list and outer burial container price list before showing the consumer those items. These requirements apply for both at-need and pre-need situations when funeral arrangements are being made.

The second type of information the Rule requires is a disclosure on the general price list that a consumer may choose only the items he or she desires. Thus, the Rule empowers consumers with the knowledge that they can pick and choose what they want to buy from the itemized general price list. Consumers do not have to purchase a package funeral at a pre-determined price that may include items or services that the consumer does not want but must pay for in order to get the other items in the package. To ensure that consumers' choices are honored by the funeral director, once funeral arrangements are made, funeral directors must give consumers an itemized statement of goods and services selected, listing each good or service selected along with the price for each item and the total cost of arrangements made.

The third type of information the Rule requires concerns disclosures of certain legal requirements and options available to the consumer. For example, the price list must disclose that in most cases embalming is not required by law. Similarly, the price list must disclose that one may use alternative

containers for direct cremations, rather than incurring the much greater expense of purchasing a casket.

In addition to ensuring that consumers receive these three basic types of information, the Rule protects consumers by prohibiting specific practices, such as misrepresenting that embalming is legally required or necessary (when it is not), misrepresenting that a casket is required for direct cremation, misrepresenting that any funeral goods or services have protective or preservative abilities when this is not the case, embalming without consent, or requiring a consumer to purchase any funeral good or service as a condition of purchasing any other good or service. In sum, the information required by the Rule seeks to enable consumers to make informed purchasing decisions at a time of extraordinary stress.

Regulatory Review and Amendment of the Rule

When the Commission adopted the Rule in 1982, it included a provision that required initiation of a rulemaking amendment proceeding pursuant to Section 18 of the FTC Act no later than four years after its 1984 effective date to determine whether the rule should be amended or terminated. 16 C.F.R. § 453.10 (1982). Accordingly, in December 1987 the Commission published an Advance Notice of Proposed Rulemaking to initiate a Rule amendment proceeding.⁽⁶⁾ This proceeding ultimately resulted in the adoption of amendments to the Funeral Rule in 1994.⁽⁷⁾ The amended Rule went into effect on July 19, 1994.⁽⁸⁾

A second regulatory review of the Funeral Rule is now underway, initiated with an announcement in the Federal Register on May 5, 1999.⁽⁹⁾ The Funeral Rule review is part of a continuous, comprehensive program whereby the Commission subjects each of its regulations and guides to formal scrutiny, with public comment, at least every ten years to ascertain whether the rule is still necessary and whether amendments could increase the rule's effectiveness or lessen its compliance burden on industry.⁽¹⁰⁾ The Federal Register Notice initiating the Funeral Rule review solicited written comments, and invited interested parties to apply to participate in a Public Workshop Conference, which was subsequently held on November 18, 1999. One suggestion raised in the rule review is to extend the Rule to cover cemeteries or other providers not currently covered. The staff of the Commission is currently reviewing and analyzing the comments and the transcript of the workshop in order to prepare a recommendation to the Commission as to whether the Funeral Rule should be amended. The Commission expects to have a staff recommendation regarding the Rule in early spring.

One possible outcome of the regulatory review described above is that the Commission may determine to initiate a process to amend the Rule. The process would be conducted pursuant to Section 18 of the FTC Act, 15 U.S.C. § 57a. Section 18 mandates multiple steps and provides numerous opportunities for public comment and participation by stakeholders.

Funeral Rule Enforcement

In connection with the first review that ultimately resulted in amendment of the Rule, the Commission's staff confronted the sobering fact that even though the Funeral Rule had been in effect for more than a decade, a low level of industry compliance prevailed. A Commission-

sponsored 1987 study and a 1988 study conducted by the Gallup organization for the AARP indicated that at that time funeral providers' compliance with the Rule's core requirement -- *i.e.*, to give consumers an itemized price list at the beginning of the arrangements discussion -- may have been as low as 23 percent.⁽¹¹⁾ These study results raised questions about the effectiveness of the enforcement approach followed up until then -- a reactive strategy that was based upon complaints from consumers or

competitors. This approach entailed exhaustive investigation and attempts to achieve settlement of charges of law violations revealed by the investigation through consent negotiations prior to filing a complaint to initiate an enforcement action.⁽¹²⁾

Seeking to increase industry compliance with the Rule, the Commission's staff adopted a new approach that combined increased industry education and stepped-up enforcement. To improve industry education, the Commission's staff prepared and distributed concise, easy-to-understand Compliance Guidelines to help funeral providers comply with the amended Rule. A copy of the Guidelines was mailed to virtually every industry member throughout the nation in June 1994.

To step up our enforcement effort, in late 1994 the Commission's staff initiated an industry "sweeps" approach -- simultaneous law enforcement actions targeting numerous industry members in a particular region, state, or city. Sweeps cases are investigated and prosecuted cooperatively by the Commission staff and the state Attorneys General. The sweeps methodology was designed to boost the overall compliance level with the Funeral Rule's core requirements: giving consumers itemized price lists.

The sweeps are based on "test-shopping" of large numbers of funeral homes in a given geographical area. The test-shopping is performed by investigators from the FTC and our counterparts at the state and local level, and in some instances, AARP volunteers. These test shoppers pose as potential customers. A cluster of FTC and/or state enforcement actions in a given geographical area are filed and announced after conducting the investigative test-shopping stage of each sweep.

Within the first year of implementing the sweeps strategy in 1994, the Commission's staff, with the assistance of the Tennessee, Mississippi and Delaware Attorneys General, conducted four sweeps, one in each of those states, plus a pilot sweep conducted by FTC staff alone in Florida. The four initial sweeps, involving test shoppings of 89 funeral homes, resulted in 20 FTC enforcement actions⁽¹³⁾ -- nearly half as many as were brought in the previous decade since the Rule went into effect. The sweeps indicated better compliance with the Rule's core provisions among the funeral providers test shopped than was indicated by the surveys performed in the late 80's; the compliance rate of homes shopped ranged from 60 to 80 percent from sweep to sweep.

Enforcement actions arising from the sweeps, like almost all of those brought prior to implementation of the sweeps methodology, were resolved before filing a complaint through consent decrees. Nearly all of the sweeps consent decrees included a civil penalty commensurate with the alleged law violations committed by each funeral home. The deterrent effect of the sweeps, however, derives not only from the amount of the civil penalties in each individual case, but also from the much greater likelihood that non-compliance will be detected.⁽¹⁴⁾

Industry Self-Regulation

The early sweeps highlighted two points. First, it appeared that compliance had increased since initiation of the new enforcement approach, the compliance rate was still not sufficiently high among those funeral providers shopped. Second, the new, more aggressive enforcement approach prompted a new awareness on the part of the funeral industry of the need for a more direct and appropriate response. Thus, in September 1995, the National Funeral Directors Association (NFDA) submitted a proposal to the Commission, which the Commission subsequently approved and implemented, for an industry self-certification and training program designed to increase Rule compliance. NFDA's action represented a turn of events in the Commission's relationship with the funeral services industry. Ever since the inception, back in the mid-1970's, of the proposal that the FTC regulate the funeral industry, the NFDA had consistently opposed the Commission at every step, both in rulemaking proceedings and litigation,

(15) and did little or nothing to assist the Commission to promote compliance with the Funeral Rule. NFDA's action in advancing its certification and training proposal represented a meaningful commitment to self-regulation that promised to do more to benefit consumers than would continued reliance only on case-by-case enforcement.

The chief component of the NFDA-sponsored program as submitted to and approved by the Commission was the Funeral Rule Offenders Program ("FROP"), (16) which offers a non-litigation alternative for correcting "core" Funeral Rule violations -- where test-shopping reveals that funeral homes have failed to provide the price lists required by the Rule. FROP is designed to encompass only violations of these core Rule provisions, and the Commission in its sole discretion may choose not to offer the FROP alternative to a particular provider. Violations of other Rule provisions, such as embalming without consent or imposing illegal tying arrangements, are outside the scope of FROP, to be addressed through conventional Commission law enforcement procedures.

If an initial test shop reveals that a funeral provider failed to comply with one or more of the core requirements, a second test shop is conducted. When two separate test shops show that a funeral provider failed to comply, the FTC may give the provider, whether or not a member of NFDA, the choice of a conventional investigation and potential law enforcement action resulting in a federal court order and payment of a civil penalty, or participation in FROP. Violators choosing to enroll in FROP make payments to the U.S. Treasury equal to 0.8% of average annual gross sales, which is generally less than the amount that the Commission would seek as a civil penalty. FROP participants also undergo compliance review by NFDA counsel, and schedule NFDA-led training and competency testing on Rule compliance for all their employees, in both pre-need and at-need situations. The NFDA, which collects a fee from FROP participants for administering the program, (17) has undertaken to keep records on homes that are enrolled in the FROP program and to make these available for review by the Commission's staff. Violators remain in the FROP program for five years and certify completion of the FROP requirements to the NFDA. The Commission periodically announces the number of referrals to FROP in a quarterly press release, but since no formal legal action is taken, no individual funeral home is identified. Of course, this information is available under the Freedom of Information Act.

The incentives for funeral homes to participate in FROP, rather than sustain a formal enforcement action by the Commission, include: (1) expedited informal resolution, resulting in reduced legal fees; (2) in lieu of a civil penalty, a payment to the Treasury that may be lower than a civil penalty resulting from an enforcement action; (3) certainty of outcome; and (4) less public exposure. As a deterrence from violating the Rule, FROP includes payments to the Treasury that are substantial enough to be treated as more than a mere cost of doing business, as well as five years of compliance training and monitoring.

FROP has enabled the Commission to achieve better compliance with the Funeral Rule while expending fewer resources. The Commission's history of Funeral Rule enforcement demonstrates that the process of a full investigation, consent negotiations, referral of both settled and unsettled complaints to the Department of Justice, (18) litigation where required, collection of civil penalties, and monitoring of order compliance demands a high level of resources, limiting the number of enforcement actions the Commission can undertake using a conventional approach. FROP's benefits to the public include the lower-cost resolution of basic Rule cases; substantial involvement of an industry partner in bringing about industry compliance; greater emphasis on educating rather than penalizing the mostly small-businesses covered by the Rule; and the likelihood of increased compliance by industry members with the Funeral Rule.

Since implementation of the FROP-oriented sweeps program, the Commission and its partners have test shopped more than 1000 homes in 37 sweeps conducted across the country. As a result, 121 homes

found to be non-compliant have opted to enter the FROP program.

The Commission is cautiously optimistic about the success to date of the FROP program. Nevertheless, we seek ways to improve this evolving program as part of our overall effort to protect consumers in their dealings with the death care industry. Responding in part to constructive criticism of the GAO,⁽¹⁹⁾ the Commission's staff has revised the written procedures used to guide the conduct of sweeps to include detailed instructions on record keeping. Revised procedures for Rule enforcement sweeps and FROP also include an improved two-tiered review of the file on each provider shopped: initial review by the coordinator of each individual sweep, and final review by the Commission's FROP coordinator. This review process should include appropriate emphasis on review of price lists to ensure they include required disclosures, that the Commission takes appropriate action in every instance, that there is consistency throughout all the Commission's sweeps, and that both the results of the test shopping and the reasons for any action taken or not taken are clearly and completely memorialized.

In addition, the Commission's staff recently performed an on-site assessment of NFDA's administration of the FROP program. As a result of this review, Commission staff has suggested several improvements to the program that could increase its efficiency and effectiveness. For example, staff recommended to NFDA that no more than 30 days elapse between enrollment in FROP and conduct of the first training for the enrollee. Similarly, staff recommended certain improvements in tracking enrollees' progress through the FROP process to ensure that all enrollees meet their requirements in a timely fashion. Also, we are selectively test shopping former FROP enrollees to determine whether the program has been successful in achieving a permanent improvement in compliance by individual homes. FROP enrollees found not to be in compliance will be subject to traditional investigation and law enforcement action.

Finally, to complement the FROP-oriented sweeps program, which has been the primary thrust of the Commission's efforts in this area in recent years, the Commission staff recently has stepped up its efforts to identify appropriate targets for conventional investigations and law enforcement actions. Several non-public investigations are currently underway. By implementing FROP, while continuing to maintain some traditional enforcement presence, we can encourage greater compliance and thus achieve greater protection for consumers.

Thank you again for this opportunity to describe for the Committee the Commission's law enforcement efforts to promote competition and protect consumers in the funeral industry. The Commission will be pleased to provide any further information that may be of assistance to the Committee.

¹ The views expressed in this statement represent the views of the Commission. My responses to any questions you may have are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

² 15 U.S.C. § 45(a). The Commission also has responsibilities under 46 additional statutes, *e.g.*, the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, which establishes important privacy protections for consumers' sensitive financial information; the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*, which mandates disclosures of credit terms; and the Fair Credit Billing Act, 15 U.S.C. §§ 1666 *et. seq.*, which provides for the correction of billing errors on credit accounts. The Commission also enforces over 30 rules governing specific industries and practices, *e.g.*, the Used Car Rule, 16 C.F.R. Part 455, which requires used car dealers to disclose warranty terms via a window sticker; the Franchise Rule, 16 C.F.R. Part 436, which requires the provision of information to prospective franchisees; and the Telemarketing Sales Rule, 16 C.F.R. Part 310, which defines and prohibits deceptive telemarketing practices and other abusive telemarketing practices.

³ *Service Corporation International*, FTC Docket No. C-3869 (Consent Order, May 4, 1999). See also, *The Loewen Group Inc.*, FTC Docket Nos. C-3677 and C-3678 (Consent Orders, August 2, 1996) (requiring divestiture of funeral homes in Cameron County, Texas and in Castlewood, Virginia); *Service Corporation Int'l*, FTC Docket No. C-3646 (Consent Order, March 21, 1996) (requiring divestiture of seven properties, located in Amarillo, Texas, and Brevard and Lee counties, Florida); *Service Corporation Int'l*, FTC Docket No. C-3579 (Consent Order, May 15, 1995) (requiring divestiture of two funeral homes and a cemetery in Medford, Oregon).

⁴ "Funeral Goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services. 16 C.F.R. § 453.1(g). "Funeral Services" are any services which may be used to: (1) care for and prepare deceased human bodies for burial, cremation or other final disposition; and (2) arrange, supervise or conduct the funeral ceremony of the final disposition of deceased human bodies. 16 C.F.R. § 453.1(i).

⁵ Federal courts have imposed civil penalties in two consent decrees between pre-need funeral providers and the Department of Justice, acting on the Commission's behalf, settling charges that the defendants failed to provide pre-need consumers with price lists and itemized statements of funeral goods and services selected, in violation of the Rule. *U.S. v. Mission Plans, Inc.*, Civil Action No. H94-3053 (S.D. Tex., entered September 13, 1994, \$20,000 civil penalty); *U.S. v. Restland Funeral Home, Inc., et al.*, Civil Action No. 3:91CV2576-G (N.D. Tex., entered September 19, 1996, \$121,600 civil penalty).

⁶ 52 Fed. Reg. 46,706 (Dec. 9, 1987). The Notice of Proposed Rulemaking was published the following May. 53 Fed. Reg. 19,864 (May 31, 1988).

⁷ The Commission determined that the original Rule was sound and still necessary. The Commission therefore retained the core provisions that required itemization, price, and other material disclosures and that prohibited misrepresentations and other specific deceptive practices. With some "fine tuning," the amended Rule closely tracks the original Rule. For example, the amended Rule retained the requirement for providers to give price information by telephone to all who request it, but eliminated the original Rule's requirement for funeral providers to volunteer to callers that price information is available by telephone. Similarly, the amended Rule makes clear that casket handling fees are prohibited. Thus, a provider cannot impose fees upon consumers who elect to purchase a casket from another seller. As another example, the amended Rule also clarifies that, if the funeral provider merely removes the deceased for transportation to the funeral home and, at that time, only requests authorization to embalm, the funeral provider is not required to offer a general price list. 59 Fed. Reg. 1592, Jan. 11, 1994.

⁸ In October 1994, the Third Circuit upheld the amended Rule in a challenge filed by industry members. *Pennsylvania Funeral Directors Ass'n, Inc. v. FTC*, 41 F.3d 81 (3d Cir. 1994).

⁹ 64 Fed. Reg. 24,250.

¹⁰ The Funeral Rule was promulgated before the Commission instituted (in 1992) its program of periodic regulatory review for all its rules and guides. This is the reason that Section 453.10 of the Rule as originally promulgated cast its requirement for reassessment of the Rule in terms of an amendment proceeding rather than a regulatory review proceeding. A regulatory review is not a rule amendment proceeding and does not entail the numerous time-consuming steps required for rule amendment proceedings by Section 18 of the FTC Act, 15 U.S.C. § 57a. Regulatory review sometimes results in initiation of a rule amendment proceeding, as in the case of the Franchise Rule, 16 C.F.R. Part 436, the Care Labeling Rule, 16 C.F.R. Part 423 and the R-Value Rule, 16 C.F.R. Part 460. In other instances, a

regulatory review proceeding has resulted in a decision to retain the rule unchanged, with no ensuing amendment proceeding necessary -- as in the case of the Credit Practices Rule, 16 C.F.R Part 444.

¹¹ See *Federal Trade Commission Bureau of Economics Staff Report - An Analysis of the Funeral Rule Using Consumer Survey Data on the Purchase of Funeral Goods and Services* (February 1989) at p. 20.

¹² Virtually all enforcement actions have been consent decrees negotiated prior to the filing of a complaint. One exception is *U.S. v. Restland Funeral Home, Inc., et al.*, Civil Action No. 3:91CV2576-G, (N.D. Tex., 1996), which was settled after the Department of Justice, on behalf of the Commission, filed a complaint and pursued the litigation for some time.

¹³ As a result of the Tennessee sweep, the State of Tennessee also brought four additional actions of its own.

¹⁴ The FTC Act provides for the imposition of civil penalties of up to \$11,000 for each violation of the Funeral Rule or any other FTC Trade Regulation Rule. 15 U.S.C. 45(m)(1)(A). Civil penalties in non-sweeps Funeral Rule cases have ranged from \$10,000 to \$100,000, with the average at about \$30,000. In calculating the civil penalty in each case, a violator's ability to pay is one of the statutory factors that a court must consider in imposing a civil penalty. 15 U.S.C. 45(m)(1)(C). Other factors that must be considered are the "degree of culpability, history of prior such conduct, effect on ability to continue to do business, and such other matters as justice may require." *Id.* Thus, the range and average of penalties necessarily reflect the fact that historically the industry has been composed largely of small businesses. Because the sweeps investigations are streamlined, focusing upon only violations of the "core" Rule provisions, the civil penalties in sweeps cases have been somewhat lower (\$1,000 to \$35,000) than in conventional cases that entailed a more exhaustive investigation documenting a greater number and range of alleged law violations.

¹⁵ NFDA joined with the Pennsylvania Funeral Directors Association in challenging the amendments to the Funeral Rule adopted on January 11, 1994. *Pennsylvania Funeral Directors Inc. v. FTC*, 41 F.3d 81 (3d Cir. 1994).

¹⁶ A second component of NFDA's industry self-certification and training program is the Compliance Assurance Program, or "CAP." (This was initially called the Funeral Industry Rule Compliance Assurance Program -- "FIRCAP"). CAP is a voluntary program of compliance review and training, for which the Commission serves solely as an advisor. According to NFDA, any funeral home, including a former FROP participant that has successfully completed that program, is eligible to join CAP, regardless of whether it is a member of NFDA. CAP is designed to encourage industry compliance through continuing training by the NFDA. Participants in CAP certify to NFDA that all licensed funeral directors employed by the participant have completed NFDA's comprehensive Rule training program. Participants also certify that they have adopted a written policy, distributed to all licensed personnel, regarding distribution of price lists and information to consumers. Participation in CAP may become an asset for funeral homes in marketing their services to consumers. CAP guidelines, however, expressly forbid any reference to the Commission in such marketing efforts.

¹⁷ Currently NFDA charges a flat fee of \$1,000 upon entry into the program, and an annual \$200 renewal fee thereafter.

¹⁸ Under Section 16 of the FTC Act, the Commission is required to refer to the Department of Justice for filing and litigation any law enforcement action involving imposition of any civil penalty for

violation of a Trade Regulation Rule. If the Department of Justice does not act on the referral within 45 days, the Commission is authorized to file and litigate the matter on its own behalf. 15 U.S.C. § 56.

¹⁹ *Death Care Consumer Protection: Complaints and State Laws Vary, and FTC Could Better Manage the Funeral Rule* (GAO/GGD-99-156), released by GAO on October 21, 1999.